IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

CHAMPALAL VS. SRI CHAND

(1) S.B.CIVIL SECOND APPEAL NO.50/2006

CHAMPALAL VS. MADAN KANWAR

(2) S.B.CIVIL SECOND APPEAL NO.49/2006

DATE OF JUDGMENT : 1st NOVEMBER, 2006

PRESENT
HON'BLE MR.JUSTICE N.P.GUPTA

Mr. M.C. Bhoot, for the appellant.
Mr. R.K. Thanvi, for the respondents.

REPORTABLE

BY THE COURT:-

These two appeals have been filed by the defendant tenant, against the different judgments and decrees passed by the learned courts below in two different suits, instituted by two different landlords, and decreeing both the suits for eviction, and also determining standard rent in favour of both the landlords.

In my view, the totality of circumstances of both the cases is such, that I think it appropriate to decide both the appeals by this common judgment.

Appeal No. 50 arises out of the suit instituted by Sri Chand, while Appeal No. 49 arises out of the suit instituted by Smt. Madan Kanwar. The two plaintiffs are husband and wife respectively.

The facts of the case are, that the suit premises earlier belonged to one owner being Milap Chand, of whom the defendant appellant was a tenant, at a monthly rent of Rs. 550/-. This property was sold by Milap Chand to the two plaintiffs, by executing two different sale deeds; one in favour of each of the plaintiffs, on 12.8.1961. Thus, each respective purchaser plaintiff became owner of respective portion of the suit premises, while the appellant was tenant in the entire premises, under one tenancy. The husband filed the suit for eviction, on the ground of default, and reasonable and bonafide necessity, alleging interalia, that he lives in Singhpol, which is located at a height, and he feels difficulty in coming and going from there. It is also alleged, that the plaintiff is carrying on business as a tenant, in the shop of late Mohan Lal Vyas, which tenanted shop is insufficient for his business, apart from the fact that the landlord is pressing for eviction, while in the suit shop (shop belonging to husband), there is space measuring 18 ft. and the plaintiff would use remaining part of the shop for residence, for himself and his family, and use the other part of the shop including the shop situated in the north, which has been

purchased by his wife, by making necessary additions and alterations for carrying on his business. The plaintiff alleged to be above 60 years of age, and claimed rent at the rate of Rs. 275/- per month (half of the rent of the total premises) and prayed for determining this, amount as standard rent also.

The other suit was filed by the wife, also alleging identical facts, including requirement of the suit premises for herself and for her husband, for carrying on business, and making identical averments for inconvenient location of the residence, and about using the premises after making necessary additions and alterations.

Thus, since the two plaintiffs want to use the premises collectively, by making necessary additions and alterations, for residence and shop, and the premises being one, under one tenancy, having been purchased by the husband and wife, in different portions, under different sale deeds, I think it appropriate to decide these appeals by this common judgment.

The defendant contested both the suits, alleging that the landlord was not entitled to bifurcate or split the tenancy, by selling the premises in portions to two different persons, and unless the original landlord gives him notice, or the plaintiff proves the valid sale deed,

the plaintiff does not become landlord. It was also contended that the plaintiff is not entitled to bifurcate the rent, nor was the seller so entitled to fix the rent. It was also contended that the seller had asked the defendant to increase the rent, and that he wants to sale the shop also, because he wants to become an 'ASCETIC', whereupon the defendant offered to purchase the premises on appropriate market price, and in the alternative also offered to increase the rent, but then the landlord did not respond, and had learnt, that he became 'ASCETIC'. It was also alleged that rent had been paid by the defendant upto July, 1996, and thereafter nobody came to demand rent. However, notice was received from the plaintiff on 4.4.1997, which was replied. The allegations of default and bonafide necessity were denied. It was denied that the husband is carrying on business in the rented shop, and rather the husband is carrying on business comfortably in the existing premises, and the suit shop is not at all suitable for the proposed business. It was also alleged, that the house at Singhpol is a well constructed house, the suit premises is in the market, which cannot be used for residential purposes. Then, the pleadings of comparative hardship etc. were taken.

Both the learned courts below decreed the plaintiffs' suits for eviction, and determined standard rent at Rs. 275/-, in each of the suit. On the question of

default it was held, by the learned lower appellate court, that the erstwhile landlord had no authority to bifurcate the rent without consent of the tenant, and since the defendant contested the rate of rent, the rent can be determined only by the Court, and therefore, he cannot be said to be defaulter. It was also found by the learned lower Appellate Court, that in view of the judgment of Hon'ble the Supreme Court, in Nalakath Sainuddin Vs. Koorikadan Sulaiman, reported in 2002(2) Apex Court Judgments 623 (SC), there is a statutory bifurcation of tenancy, and suit could be filed by each of the plaintiff, in respect of the portions of premises, purchased, and the bonafide necessity of the plaintiffs', as pleaded, was also upheld.

Assailing the impugned judgments, it was contended, that in a suit for eviction, the erstwhile landlord, so also the purchaser of the other portion of the premises, was also necessary party, and in absence thereof the rent could not be determined, as in determination of rent for any portion of the premises would obviously adversely affect the rent for the other portion, and therefore, it could not be done in absence of other purchasers. It was contended, that thus the suits are bad for non joinder of necessary parties. It was also contended, that either of the suits for eviction also could not be decreed, as it was not open to the original landlord

to split up, or effect bifurcation of the tenancy, merely by executing different sale deeds in favour of different persons, and even if it was done, it was not open to any of the plaintiff to file the suit for eviction. Reliance in this regard was placed on judgment of this Court, in Ghisa Ram Vs. Raja Ram Kumar, reported in 1975 WLN (UC)-199. Then, assailing the finding on the question of reasonable and bonafide necessity, it was contended that the distance between the shop where the husband is carrying on business and the residential house is only five minutes walk, and there is nothing on record to show, that the husband is under threat of eviction from the shop occupied by him. In that view of the matter, the alleged requirement only rests in the realm of desire, and on that ground the decree for eviction could not be passed. Relying upon the judgment of this Court, in Uda Ram Vs. Pyare Lal, reported in 2003(3) RLR-190, it was contended that before decreeing the suit for eviction on the ground of reasonable and bonafide necessity, the landlord must prove the three elements, which must coexist, to sustain the landlord's suit for possession of the premises, and the three elements are as under:-

1. The landlord require the premises for his own use as owner;
2. His requirement is reasonable and bonafide for himself or for family;
3. Non availability of an accommodation in the city or town for that purpose.

It was contended that in the present case admittedly the plaintiff has in his possession other accommodation in the city or town, inasmuch as the plaintiff owns a house which is located at a distance of five minutes walk from the existing shop, and is in occupation of a shop. Thus, in any case, the third element does not exist, and therefore, the learned courts below were in error in finding the reasonable and bonafide necessity in favour of the plaintiffs.

Learned counsel for the respondents, on the other hand, supported the impugned judgments, and submitted that from a look at para-1 of the plaint it is clear, that premises is not only shop, but has other apartments also, including rooms and latrine and bathroom. Then, it was also pleaded that the seller had given notice to the appellant to pay Rs. 275/- per month to each of the purchasers, obviously so that the tenant may not be at a loss by being made to pay any amount more than the agreed rent, but then that notice was also not replied. Not only that in the written statement also no objection was raised in this regard. Then, referring to the judgment in Nalakath's case, it was contended, that there is statutory splitting up of tenancy with sale of the premises by the original landlord, and therefore, each of the purchasers could maintain the suit for eviction, and there is nothing wrong. Then,

regarding bonafide necessity it was contended, that the finding is a finding of fact, concurrently recorded by both the courts below, which does not require any interference.

I have considered the submissions, and have gone through the impugned judgments, so also the various judgments cited at the Bar.

The main controversy involved, or rather the main stress laid by the learned counsel for the appellant, is on the maintainability of the suit by the purchaser of the portion of the tenanted premises, and that also without impleading the original landlord, and/or purchaser of the other part of the premises. According to the learned counsel, the sale results into splitting up of the tenancy, which is not permissible on the face of language of Section 37 and 109 of the Transfer of Property Act. Ghisa Ram's judgment was pressed into service to support the submission.

So far bifurcation of rent is concerned, in my view, if a practical view were to be taken, then, admittedly the total rent of premises was Rs. 550/- per month, and each of the plaintiff is also claiming Rs. 275/- per month, thus there is nothing wrong in this part of the order passed by the learned courts below; and if technical strict legal view is taken, in that event also by virtue of

Section 109 of the Transfer of Property Act, if the parties do not agree, then the Court is to determine the rent. In the present case, the plaintiff had made prayer for determining the rent, and the court has so determined the rent in both the suits, without increasing the overall liability of the tenant, and the learned lower Appellate Court has already found, that the tenant cannot be said to be defaulter till the rent is determined by the Court. In that view of the matter, I do not find any error in determination of rent made by the learned courts below.

Coming to the question of bifurcation or splitting up of the tenancy. I may straightway quote the provisions of Section 37 and 109 of the Transfer of Property Act, which read as under:-

> "**37. Apportionment of benefit of obligation on severance.**- When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole pases from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:
>
> Provided that no person on whom the burden of the obligation lies shall be answerable for failure

to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the State Government by notification in the Official Gazette so directs.

109. Rights of lessor's transferee.-If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased."

Coming to Ghisa Ram's case, the facts were, that a huge property belonged to one Sooraj Prakash Bhargava, and was leased out to two defendants. Out of that property, plot no. C and D, measuring 803.61 sq. yards were purchased by the plaintiff from the owner by sale deed, and thereafter appellant filed the suit for eviction, and arrears of rent. The learned trial court found that

original seller was a necessary party, thereupon the plaintiff amended the plaint and he was added as defendant no.3, then the learned trial court decreed the suit, holding the plaintiff entitled to mesne profit at the rate of Rs. 15/- per month. Then in appeal, the appellate court set aside that decree, and remanded the case by framing additional issue, as to what should be the apportionment of the rent out of the total amount of rent payable by the defendant tenant to the original landlord. However, after remand the learned trial court dismissed the suit, which dismissal was upheld in appeal. Then, in second appeal also Section 37 and 109 of the Transfer of Property Act were considered, and it was held, that these two provisions do not empower the plaintiff to break up the integrity of the tenancy. The two judgments of Madhya Pradesh High Court were distinguished, and it was held, that the purchaser alone cannot determine the tenancy with respect to such land, which was part of the demised premises, the transfer of part of the premises does not amount to division of the tenancy, and thus, the dismissal of the suit was upheld. On the other hand, in Nalakath's case, the facts were, that there was one building comprising of one shop with opening on two sides, and the local authorities assigned two numbers to two doors, being door no. 6/481 and 6/482, i.e. small corner of a shop situated between the openings of the two sides was assigned no. 6/482. This entire property was let out to the defendant on a monthly rent of Rs. 65/- in

the year 1969. Then, somewhere in 1972 the door no. 6/482 was sublet by the defendant to the plaintiff. Then, in 1988 the plaintiff purchased the entire property from the original owner, and then served a notice on the defendant to surrender the possession over the property in his possession. Then, the plaintiff filed an application for eviction, which was decreed. In this case again Hon'ble the Supreme Court considered the provisions of Section 109 of the Transfer of property Act, and held in para 23 and 24 as under:-

> "23. In B.P.Pathak v. Dr.Riyazuddin & Ors., AIR 1976 MP 55, a Division Bench of the High Court of Madhya Pradesh consisting of Chief Justice P.K. Tare and Justice Shiv Dayal (later, Chief Justice), took the view on an illuminating, survey of judicial opinion that a transferee of a part of leased property acquires "all the rights" of the lessor in respect of that part as if it alone had comprised the lease and a new relationship is created between the transferee and the lessee. The section creates a statutory attornment substituting, but retaining the same effect of, the contractual attornment. Title of the assignee is complete on execution of the deed of assignment and is not postponed till the notice of the assignment. The Division Bench repelled the submission that since the lessor could not have terminated the tenancy of a part of the demised premises by a notice to quit, he cannot transfer the premises in part and confer such a right on the transferee. The Division Bench held that the right of ejectment is inherent in ownership. Therefore, by virtue of section 109 of T.P. Act such transferee is entitled to evict the tenant from the part transferred to him not only when the lease had been determined before the transfer but also if it is determined after the transfer in any of the circumstances mentioned in Section 111. Thus he can terminate by a quit notice the lease in respect of the property transferred to him.

> 24. The Division Bench decision came up for consideration by a Full Bench of the same High Court in Sardarilal v. Narayanlal, AIR 1980 MP 8. Chief Justice G.P.Singh, speaking for the Full Bench, approved the statement of law in B.P. Pathak's case and held that Section 109 of T.P. Act confers a right on the owner to effect a severance of a lease by his unilateral act and tenancy over a part of the property leased can be determined by the transferee."

Obviously thus it was found, that Section 109 of the Transfer of Property Act confers a right on the owner, to effect a severance of a lease by his unilateral act, inasmuch as on the alienation of a part of the rented property by the owner, it results into statutory splitting of the tenancy, and the tenancy over a part of the property leased, can be determined by the transferee. In my view, on the face of the judgment in Nalakath's case, the judgment in Ghisa Ram's case cannot be said to be any more a good law. Obviously, therefore, in my view, each of the plaintiffs were entitled to maintain the present suit for eviction of the defendant tenant, from their respective part, as purchased.

So far as the finding on reasonable and bonafide necessity is concerned, it is true that they are findings of fact, that apart, in the present case defendant's case was that shop in occupation of the plaintiff is not of tenancy, but then the defendant has not deposed this aspect, even though the plaintiff was not suggested in this

regard. Therefore, it has to be, and has rightly been concluded by the learned courts below, that the shop in occupation of the plaintiff is a tenanted premises. That being the position, coupled with the fact, that the tenanted shop measures only 7 x 7 ft, or may be 7 x 9 ft. but then the plaintiff husband has deposed that shop to be too small, and admittedly residential house is on a upper gradient, and looking to the advanced stage of the plaintiffs, who have no issues, if they want to shift, "Lock Stock and Barrel" in the suit premises, shifting their business as well as their residence, and thereby want to live together in the last quarter of their life, it cannot be said, that the requirement is not reasonable, or not bonafide.

Even otherwise in view of the judgments on this court, in Heera Lal Vs. Panna Lal reported in 1974 WLN (UC)-365, and M/s. General Auto Agencies Vs. Hazari Singh reported in 1975 WLN-631, wherein it has been held that where the plaintiff is occupying in a tenanted premises and wishes to shift in his own premises or in purchased premises, the requirement would be reasonable and bonafide. No oblique motive has been suggested to the plaintiff, and looking to the apartments, and the over all circumstances, in my view the finding on the question of reasonable and bonafide necessity does not require any interference.

Thus, I do not find any sufficient ground to interfere with the findings on the question of reasonable and bonafide necessity and other allied issues, either.

The appeals thus do not involve any substantial question of law, and the same, are therefore, dismissed summarily.

However, at the request of the learned counsel, the appellant is granted one year's time to vacate the suit premises, on the conditions, that the defendant gives an undertaking before the learned trial court within one month from today, that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff, and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decreetal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today, and shall further continue to deposit amount equal to the monthly rent, by way of damages for use and occupation, by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N.P.GUPTA), J.